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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,023	08/27/2003	Robert Lombard	KFHI-109	6442

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EXAMINER	
PRATT, HELEN F	
ART UNIT	PAPER NUMBER
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/650,023	LOMBARD ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *26-53,58 and 59* is/are allowed.

6)☒ Claim(s) *1-23,25 and 54-57* is/are rejected.

7)☒ Claim(s) *24* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-23, 25, 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karwowski et al. (5,731,029) in view of Nakajima (JP9149757) and Scaglione (5,094,870), and McGenity et al. (6,652,892) and Richar et al. (5,405,836).

Karwowski et al. disclose a process as in claims 8-15, of making a food product as claimed (abstract and, col. 17, lines 1-14, col. 19, lines 1-14, col. 14, lines 64-70). Claim 8 differs from the reference in the step of adding wheat flour to the cooled meat in particular amounts. However, Nakajima discloses that it is known to use wheat flour in a composition, which is to have been rotary molded (abstract). Scaglione et al. disclose that it is known to use wheat flour in making a dog biscuit in which the dough is rotary molded (col. 9, lines 35-44). McGenity et al. disclose that it is known to use ground wheat in compositions containing meat, which are to be rotary molded (col. 5, lines 6-15, col. 6, lines 24-34, col. 7, lines 15-24). Richar et al. disclose that it is known to make pet biscuits using wheat flour, meat in a composition, which is to be rotary molded (col. 7, lines 20-40, and col. 8, lines 48-55). Therefore, it would have been obvious to use wheat flour in a known composition to be rotary molded.

Claim 16 further requires adding at least one liquid ingredient to the cooked meat. Water added separately to the meat dough is disclosed at col. 8, lines 8-10 of Karwowski et al.

Humectants are disclosed in col. 8, lines 21-61 which are added to the cooked meat dough as in claim 17 of Karwowski et al.

Adding dry ingredients as in claim 18, such as sucrose is disclosed in col. 8, lines 62-68 and filler ingredients in col. 9, lines 5-10 of Karwowski et al.

Adding dry ingredients in the form of a preblend is seen as being within the skill of the ordinary worker as in claim 19, and 20 since the various ingredients are disclosed and a "Seasoning Blend, Beef" is disclosed (col. 16, lines 45-55). Therefore, it would have been obvious to add ingredients in the form of a preblend for ease of processing.

Filler ingredients as in claim 21 are disclosed by Karwowski et al. are disclosed in col. 9, lines 5-12. Nothing new is seen in other known ingredients used as in claim 21 absent a showing of unexpected results. Attention is invited to In re Levin, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper

showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to add other types of filler ingredients for their known function in the process of Karwowski et al.

Claim 22 further requires cooling under a vacuum. Karwowski et al. disclose cooling to 90% (col. 17, lines 14-30). Nothing new is seen in cooling under a vacuum as vacuum cooling is well known, absent anything new or unexpected. Therefore, it would have been obvious to cooling a vacuum in order to save time.

Claim 23 further requires 35-75% meat. The reference to Karwowski et al. disclose using 58.93% meat (col. 18, lines 1-5) and the reference is also to a strip shaped food product, which is a pet snack as in claim 25 (col. 1, lines 54-55).

The limitations of claims 1-4, 7 have been disclosed by the combination of references and are obvious for those reasons.

The water activity of the product as in claim 5 is from 0.63 to 0.73 as disclosed by Karwowski et al. (col. 14, lines 49-66).

Claim 6 further requires that the food product is flexible rotary molded piece and can be bend so that the opposing ends touch each other. Karwowski discloses that the pieces of dough take on the shape of individual mold or cavities of the die roll (page 13, lines 20-30) and that the molded products can be strip shaped (col. 14, lines 64-68) and that different shapes may be produced using variously shaped mold upon a single die

rolls. Applicants' drawings show such die molds as in figures 2-4. Nothing is seen that the pieces of the reference would not bend as claimed since the claimed water activity has been disclosed by Karwowski, making the product moist enough to bend. Therefore, it would have been obvious to make a product that bends as disclosed by Karwowski et al. and the combined references.

Claim 54 further requires that the flexible rotary molded piece has a wavy shape. Karwowski et al. disclose that the product can be strip shaped (col. 14, lines 64-68). Flexible rotary molded piece is an apparatus limitation in a composition claim and is not given weight. The particular shape of a piece is considered a matter of design in a composition claim and is not given weight. Therefore, it would have been obvious to make the composition in various shapes.

The further limitations of claims 55-57 are also considered to be dependent on the type of apparatus and not the composition and are not given weight. Therefore, it would have been obvious to use various types of apparatus to make the composition as in claims 55-57.

Allowable Subject Matter

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26-53, 58, 59 are free of the prior art.

ARGUMENTS

Applicant's arguments filed 11-2-06 have been fully considered but they are not persuasive. Applicants argue that the addition of wheat flour to the composition is not shown by the references and that the secondary references are to products such as hard biscuits. This is not seen as the references in combination disclose that it is known to add wheat flour to compositions for rotary molding. The wheat flour does not necessarily make for a hard product, but also the method of cooking the product. Applicants claimed water activity has been shown by the combined references, therefore the product of the combined references should not be hard.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 12-15-06

H. Pratt

HELEN PRATT
PRIMARY EXAMINER